IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 18616 of 2007(N)

PETITIONER:

DR.SURESH BABU C CHAMBADANTAVIDA,
AGED 36 YEARS, S/O GOVINDAN C., FIRST YEAR M.D.
(T.B&RD) STUDENT, MEDICAL COLLEGE, KOTTAYAM
PERMANENTLY RESIDING AT CHAMBADANTAVIDA HOUSE,
P.O.PUTHUR, VIA PANOOR KANNUR DISTRICT,
PIN. 670692.

BY ADV. SRI.P.T.DINESH
SMT.SUSMITHA P.MALLAYA

RESPONDENTS:

---

1. STATE OF KERALA REPRESENTED BY
PRINCIPAL SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE POST GRADUATE SELECTION COMMITTEE,
REPRESENTED BY ITS CHAIRMAN,(SECRETARY TO
GOVERNMENT), HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. THE DIRECTOR OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM.

4. DR.RAJIN T.K., VISWAPRABHA,
THANDAN KANDIYIL HOUSE, J.T.ROAD, BADAGARA,
KOZHIKODE DISTRICT.

5. DR.S.REJITH KUMAR, ELANJIPARAMBIL HOUSE,
PUNNAPRA NORTH P.O., ALAPPUZHA DISTRICT.

6. DR.SAJEEV K.T., K.T.S.HOUSE,
KORAPPACHAN KUZHIYIL, CHELANNUR P.O.,
KOZHIKODE DISTRICT.

ADDL.R-7. RAVIKUMAR.B., S/O.LATE MAHALINGA PATALI,
AGED 37 YEARS, FIRST YEAR P.G.DIPLOMA STUDENT,
D-ORTHOPAEDICS, GOVT. MEDICAL COLLEGE, KOTTAYAM,
PERMANENTLY RESIDING AT PERDALA,
KASARGOD DISTRICT IS IMPLEADED AS ADDITIONAL R7 AS
PER THE ORDER DTD.10.7.2007 IN IA NO.9288/07.

BY ADV. SRI.MATHEW JAMES
SRI.G.KRISHNAKUMAR
SRI.V.N.RAMESAN NAMBISAN
SRI.SUDHEESH.A.
SMT.C.V.BINDU
BY SR.G.P. SRI.BENJAMIN PAUL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP(C) NO.18616 OF 2007)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the relevant part of the prospectus.

Ext.P2: Copy of the order dated 9.4.2007.

Ext.P3: Copy of the Memo dtd.13.4.2006 by R3.

Ext.P4: Copy of the Memo dtd.25.5.2007 by R3.

Ext.P5: Copy of Judgment dtd.30.5.2007 in WP(C) No.14927/07.

Ext.P6: Copy of Judgment dtd.13.6.2007 in WP(C) No.16945/07.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

WP(C) NO. 18616 OF 2007 - N

Dated this the 9th day of August, 2007

J U D G M E N T

The petitioner is an aspirant for admission to Post Graduate Medical course in the State of Kerala. He is seeking admission in the quota set apart for Assistant Surgeons under the 'Difficult Rural Area Quota'. According to him, he is among those entitled to reservation in the 'Difficult Rural Area Quota'. He is number three in rank among those eligible for admission in that quota and therefore, fourth respondent, who has not been included in the said list prepared for the said quota at all, is not entitled to get admission in preference to the petitioner. The petitioner contends that therefore, the admission granted to the fourth respondent in the speciality of Paediatrics should be cancelled and instead, the petitioner should be admitted to that seat. When it was pointed out to the petitioner that the Medical Council of India has framed regulations prescribing the outer time

limit of 31st of May every year as the last date up to which students can be admitted against vacancies arising due to any reason for the Post Graduate course in Medical Sciences, the petitioner would want to draw a distinction, based on the decisions reported in **Medical Council of India** v. **Madhu Singh and others** [(2002) 7 SCC 258] and **Mridul Dhar (Minor) and another** v. **Union of India and others** (2005(2) SCC 65). According to him, while laying down the necessity for prescribing a cut off date for the purpose of admissions, the Supreme Court was only preventing midstream admissions and not the one like the present situation. According to him, this is only a question of re-allotment and not admission at all and therefore, the cut off date prescribed by the Medical Council of India is not applicable to the present case. The petitioner, particularly, refers to paragraph 22 of Madhu Singh's case (cited supra) and paragraphs 2, 7, 9 and 11 of the Mridul Dhar's case (cited supra). He would submit that in the interest of justice and equity, this Court,

exercising the jurisdiction under Article 226 of the Constitution of India has ample powers to set right the injustice caused to the petitioner, to direct his admission in the place of the fourth respondent.

2. I have considered the contentions of the petitioner on this point. In view of the long delay in completing the admission process in the various Medical Colleges in the country, firstly, the Supreme Court in Madhu Singh's case impressed upon the Union of India and all States the necessity to fix a cut off date for completing admissions. Since experience proved that in spite of the said decision, the various States have not taken any concrete steps in that regard, ultimately the Supreme Court was forced to lay down the cut off dates by themselves in Mridul Dhar's case. Going by Mridul Dhar's case, the Supreme Court has fixed 31st of May as the last date up to which students can be admitted against vacancies arising due to any reason. The Medical Council of India has framed regulations making it incumbent of all States to complete the medical

admissions to Post Graduate Medical course latest by 31st May of every year. In fact, the regulations framed by the Medical Council prohibits even transfer of a student already admitted in one college to another college, which involves no admission at all. If that itself is prohibited, I am not inclined to hold that re-allotment, which stands on a more serious pedestal, can be permitted beyond the cut off date.

3. Of course, the learned counsel for the petitioner would contend that re-allotment is not admission because the petitioner has already been admitted to one speciality and all what he wants is to exercise his higher option for a speciality of his choice against which the fourth respondent has been illegally given admission without reference to the better claim of the petitioner. I am not satisfied that re-allotment is not admission. Re-allotment is certainly admission to a different speciality. It cannot be said to be otherwise by any stretch of imagination. Therefore, I am satisfied that even in the name of justice and equity, this Court

cannot override the specific cut off date prescribed by the Supreme Court of India which has been incorporated in the Medical Council of India regulations. The petitioner has filed this writ petition only on 18.6.2007 much after the cut off date of 31.5.2007. That being so, however much meritorious the claims of the petitioner are, this Court cannot direct granting of admission to the petitioner in violation of the cut off date prescribed by the Supreme Court of India and the Medical Council of India regulations.

4. The petitioner would contend that in that case, the petitioner would be entitled to appropriate compensation in the facts and circumstances of the case. He would, in this connection rely on the Supreme Court decision reported in **Vikram Dhillon** v. **State of Haryana** (AIR 2007 SC 1067) in which in the case of admission to B.D.S.course, in a petition under Article 32, the Supreme Court had in fact discussed this issue and held that in such situation, compensation can, in fact, be granted to students who have been wrongly

denied admission. But, I find that the petitioner has not made any prayer for compensation in this writ petition. Even otherwise, the question of compensation would depend on lot of factors ascertaining of which would require decision on facts by taking evidence which I do not think that I can embark upon in a proceedings under Article 226 of the Constitution of India.

5. In the above circumstances, I am not inclined to entertain this writ petition and the same is dismissed. Needless to say, the petitioner would be entitled to approach the appropriate authorities for realisation of compensation if he is able to prove eligibility for the same. I make it clear that in view of the fact that I am dismissing the writ petition on a technical ground, I have not considered the matter on merits.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007